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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

KENNETH R. EVANS,
Plaintiff,

v.

SHELLPOINT MORTGAGE
SERVICES aka NEWREZ, LLC, a
Delaware Corporation; MTC
FINANCIAL, dba TRUSTEE
CORPS, a California Corporation; and
THE BANK OF NEW YORK
MELLON FKA THE BANK OF
NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-21,

Defendants.

Case No.: 2:19-cv-00288-TOR

**ANSWER AND AFFIRMATIVE
DEFENSES OF NEWREZ LLC DBA
SHELLPOINT MORTGAGE
SERVICING AND THE BANK OF
NEW YORK MELLON FKA THE
BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS CWABS,
INC. ASSET-BACKED
CERTIFICATES, SERIES 2006-21**

Defendants, Newrez LLC dba Shellpoint Mortgage Servicing
("Shellpoint") and the Bank of New York Mellon fka the Bank of New York, as
Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series

1 2006-21 (“BONY Trust”) (collectively, “Defendants”) hereby answer Plaintiff’s
2 Complaint as follows:

3 **INTRODUCTION**

4 1. Admitted in part and denied in part. Admitted that a trustee’s foreclosure
5 proceeding has commenced. Denied that the statute of limitations has run.
6

7
8 **JURISDICTION AND VENUE**

9 2. Admitted.

10 3. Admitted.

11 4. Admitted that the action is pending in Chelan county pursuant to statute.
12 Denied that the action is “proper.”
13

14 **PLAINTIFF**

15 5. Defendants are without knowledge and therefore deny same.

16 **DEFENDANTS**

17 6. Shellpoint denies that it is a Delaware corporation but admits that it
18 conducts business in Chelan County, WA.

19 7. Defendants are without knowledge and therefore deny same.

20 8. BONY Trust denies that it is a New York corporation but admits that it
21 conducts business in Chelan County, WA.
22

23 **FACTS**

1 9. Defendants admit that Plaintiff appears to own the property in question.
2 Defendants are without knowledge as to Plaintiff's residence and therefore deny
3 same.

4 10. Admitted.

5 11. Defendants admit to the extent that the public record appears to reflect a
6 conveyance of the subject property purporting to grant a fee simple estate to
7 Plaintiff and is aware of no subsequent conveyances. Defendants are otherwise
8 without knowledge and therefore deny same.

9 12. Admitted, except that the Deed of Trust Beneficiary was named as
10 Mortgage Electronic Registration Systems, Inc., as nominee for the Lender,
11 identified as Countrywide Home Loans, Inc.

12 13. Defendants admit the issuance of a notice of default but are without
13 knowledge and therefore deny as to the remainder.

14 14. Defendants admit that a Notice of Trustee's Sale was recorded on the date
15 and under the instrument number indicated. Deny that a complete, true, correct
16 copy is attached to Plaintiff's Complaint as only the first page of the exhibit was
17 served upon Defendants.

18 15. Admitted to the extent that the document recorded under the indicated
19 instrument number stated a due date of August 23, 2010, to cure the arrearage in
20 order to halt the sale.

1 16. This allegation consists of a legal conclusion to which no response is
2 required. To the extent that a response is required, Defendants deny and further
3 note that the allegation assumes an incorrect legal standard.

4 17. Admitted.

5 18. Admitted.

6 19. Defendants admit that a Notice of Trustee's Sale was recorded on the date
7 and under the instrument number indicated. Deny that a complete, true, correct
8 copy is attached to Plaintiff's Complaint as only the first page of the exhibit was
9 served upon Defendants.
10

11 20. Admitted to the extent that the document recorded under the indicated
12 instrument number stated a due date of April 25, 2011, to cure the arrearage in
13 order to halt the sale.
14

15 21. This allegation consists of a legal conclusion to which no response is
16 required. To the extent that a response is required, Defendants deny and further
17 note that the allegation assumes an incorrect legal standard.

18 22. Admitted.

19 23. Denied.

20 24. Admitted.

21 25. Admitted.

22 26. Admitted.

1 27. Admitted.

2 28. This allegation consists of a legal conclusion to which no response is
3 required. To the extent that a response is required, Defendants admit only to the
4 extent that termination of the trustee's sale proceeding terminated any tolling that
5 occurred on that basis alone, but is without knowledge regarding other tolling
6 events and denies.
7

8 29. Admitted that the letter dated April 9, 2013, attached as Exhibit D to the
9 Complaint, asserted notice of intent to accelerate. Denied as to Plaintiff's
10 characterization of the effect on acceleration. Denied as to Plaintiff's assertion that
11 the loan had been accelerated.
12

13 30. Defendants are without knowledge and therefore deny same.

14 31. Defendants deny the stated impact of rejection of partial payment. Without
15 knowledge as to the balance and therefore also denied.
16

17 32. Admitted.

18 33. This allegation contains a legal conclusion to which no response is
19 required.
20

21 34. Denied.

22 35. Denied.

23 36. Defendants are without knowledge and therefore deny.
24

1 37. Admitted that the document attached as Exhibit F appears to reflect the
2 allegation asserted. Defendants are otherwise without knowledge and therefore
3 deny same.

4 38. Admitted that the document attached as Exhibit G appears to reflect the
5 allegation asserted. Admitted as to receipt of the same. Denied that the request was
6 “ignored.” Defendants are otherwise without knowledge and therefore deny same.
7

8 39. Admitted that a Notice of Default was generated on the date indicated.
9 Without knowledge and therefore denied as to the remainder.

10 **FIRST CAUSE OF ACTION**
11 **INJUNCTIVE RELIEF**

12 40. Defendants re-allege their previous responses and incorporate the same by
13 reference herein.

14 41. This allegation contains a legal conclusion to which no response is
15 required. To the extent to which a response is required, Defendants deny.
16

17 42. This allegation contains a legal conclusion to which no response is
18 required. To the extent to which a response is required, Defendants deny.

19 43. Defendants deny that Plaintiff is entitled to the relief requested.

20 **SECOND CAUSE OF ACTION**
21 **DECLARATORY RELIEF**

22 44. Defendants re-allege their previous responses and incorporate the same by
23 reference herein.
24

1 45. This allegation contains a legal conclusion to which no response is
2 required.

3 46. This allegation contains a legal conclusion to which no response is
4 required. To the extent to which a response is required, Defendants deny.
5

6 47. Defendants deny that Plaintiff is entitled to the relief requested.

7 48. Defendants deny that Plaintiff is entitled to the relief requested.

8 49. Defendants deny that Plaintiff is entitled to the relief requested.

9 50. Defendants deny that Plaintiff is entitled to the relief requested.

10 51. Denied.

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12 **THIRD CAUSE OF ACTION**
VIOLATION OF THE FORECLOSURE FAIRNESS ACT

13 52. Defendants re-allege their previous responses and incorporate the same by
14 reference herein.

15 53. Denied.

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17 54. This allegation contains a legal conclusion to which no response is
18 required. To the extent to which a response is required, Defendants deny.

19 55. Denied.

20 56. This allegation contains a legal conclusion to which no response is
21 required.

22 57. Denied.

23 58. Denied.
24

1 59. This allegation contains a legal conclusion to which no response is
2 required. To the extent to which a response is required, Defendants deny.

3 **FOURTH CAUSE OF ACTION**
4 **CONSUMER PROTECTION ACT**

5 60. Defendants re-allege their previous responses and incorporate the same by
6 reference herein.

7 61. Denied.

8 62. This allegation contains a legal conclusion to which no response is
9 required.
10

11 63. This allegation contains a legal conclusion to which no response is
12 required. To the extent to which a response is required, Defendants deny.

13 64. Denied.

14 65. Defendants deny that Plaintiff is entitled to the relief requested.

15 66. Defendants are without knowledge and therefore deny same.
16

17 **FIFTH CAUSE OF ACTION**
18 **CIVIL CONSPIRACY**

19 67. Defendants re-allege their previous responses and incorporate the same by
20 reference herein.

21 68. Denied.

22 69. Denied.

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1 **SIXTH CAUSE OF ACTION**
2 **QUIET TITLE**

3 70. Defendants re-allege their previous responses and incorporate the same by
4 reference herein.

5 71. Defendants are without knowledge and therefore deny same.

6 72. Defendants deny.

7 All allegations not specifically and expressly addressed above are hereby otherwise
8 denied.
9

10 **AFFIRMATIVE DEFENSES**

11 For their affirmative defenses, Defendants state as follows:

12 1. Plaintiff failed to state a claim upon which relief may be granted.

13 2. Plaintiff, by his conduct, waived and/or is estopped from asserting or
14 pursuing claims against Defendants.

15 3. The Plaintiff proximately and solely caused any damages allegedly
16 sustained and accordingly, any judgment to which the Plaintiff would otherwise be
17 entitled should be reduced or barred as a result.

18 4. Plaintiff failed to mitigate his own damages, if any are proven at trial.

19 5. The Plaintiff's damages, if any, are the fault of third parties over whom
20 Defendants had no control or right of control.
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1 6. Plaintiff's damages, if any, are not actual because the Plaintiff voluntarily,
2 knowingly, and expressly consented to the situation that allegedly caused them
3 harm.

4 7. The Plaintiff's damages, if any, are the result of their comparative
5 negligence or fault and are to be apportioned according to the relevant fault of the
6 parties.

7 8. Pending further discovery, the Plaintiffs' claims may be, and it is therefore
8 alleged, barred in whole or in part by defenses of laches, estoppel, release, waiver,
9 accord and satisfaction, ratification, acquiescence, bad faith and/or unclean hands,
10 and other equitable defenses.

11 9. Defendants' acts and any omissions with respect to the Plaintiff were at all
12 times in good faith, for good cause, and without intent to wrongfully deprive the
13 Plaintiff of any benefits or favorable terms.

14 10. Defendants reserve the right to assert any additional defenses or affirmative
15 defenses pending further discovery, and nothing contained herein should be
16 construed as a waiver of any such additional defenses.

17 **XII. DEFENDANTS' REQUEST FOR RELIEF**

18 Based on the foregoing, Defendants request the following relief:

19 1. That this Court deny the relief Plaintiff's request for an injunction;

- 1 2. A judgment in its favor and against Plaintiffs, dismissing Plaintiffs' claims
2 in their entirety with prejudice
3 3. An award of attorney's fees pursuant to the Note and Deed of Trust, FRCP
4 11, or any other legal or equitable basis; and
5 4. Any other such relief this Court deems just and equitable.
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7 Dated: October 17, 2019

WRIGHT, FINLAY & ZAK, LLP

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9 /s/Joseph T. McCormick _____
10 Joseph T. McCormick III, WSBA #48883
11 Attorneys for Shellpoint and BONY Trust
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1 CERTIFICATE OF SERVICE

2 I, Karina Khamidullina, declare under penalty of perjury under the laws of
3 the State of Washington that the following is true and correct: I am employed with
4 the law firm of Wright, Finlay and Zak, LLP, I am a resident of the State of
5 Washington, over the age of 18 years old, not a party to this action, and am
competent to be a witness herein.

6 I hereby certify that on the date stated below, I served the Answer and
7 Affirmative Defenses upon the following:

8 [X] (BY ELECTRONIC SERVICE) Pursuant to CM/ECF System, registration
9 as a CM/ECF user constitutes consent to electronic service through the
10 Court's transmission facilities. The Court's CM/ECF systems sends an e-
mail notification of the filing to the parties and counsel of record listed
above who are registered with the Court's EC/ECF system.

11 Nathan J. Arnold: nathan@caoteam.com
12 Emanuel Jacobowitz: manny@caoteam.com
13 Cloutier, Arnold, Ortega, PLLC
Attorneys for Plaintiff

14 Michael S. DeLeo: mdeleo@prklaw.com
15 Peterson Russell Kelly, PLLC
16 *Attorneys for Defendant MTC Financial Inc. d/b/a Trustee Corps*

17 [X] (FEDERAL) I declare that I am employed in the office of a member of the
18 bar of this court at whose direction the service was made.

19 I declare under penalty of perjury of the laws of the United States that the
20 foregoing is true and correct. Executed on October 17, 2019, at Seattle, WA.

21 /s/Karina Khamidullina
22 Karina Khamidullina
23
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